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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application No. : 10/664,049 10/664,039  
Applicant : STOCKSTILL, JOHN W.  
Filed : SEPTEMBER 17, 2003  
Title : COMBINATION INTERPROXIMAL DENTAL STRIPPER  
  
Art Unit : 3732  
Examiner : WILSON, JOHN J.  
  
Atty Docket No. : MCOG0002-UT1

Mail Stop Appeal Brief- Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The below-identified communication(s) is (are) submitted in the above-captioned application or proceeding:

- Appellant's Appeal Brief
- Patent Fee Transmittal
- Credit Card Payment Form (PTO-2038)
  
- The Commissioner is hereby authorized to charge payment of any fees associated with this communication, including fees under 37 C.F.R. §§ 1.16 and 1.17 or credit any overpayment to Deposit Account Number 10-0233-MCOGO-0002-UT1.

Respectfully submitted,

  
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February 20, 2007



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**APPELLANT'S APPEAL BRIEF UNDER 37 CFR § 41.37**

Sir:

This is an appeal of Claims 1 and 4-17 currently pending in the present application that were rejected by the Examiner in a Final Action dated July 18, 2006 (Final Action). A Notice of Appeal and Request for Pre-Appeal Brief Review (Request) was timely submitted by Appellant to the Patent and Trademark Office on November 30, 2006. A Notice of Panel Decision from Pre-Appeal Brief Review (Decision) was mailed on January 22, 2007, resetting the due date for filing an Appeal Brief to February 22, 2007. Appellant is timely submitting an Appeal Brief to the Board of Appeals and Patent Interferences (Board) by: (1) submitting this Appeal Brief within one-month of the date set forth in the Decision; and (2) paying the appropriate fee.

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01:FC:2402 date: 02/22/2007 10664039 00 00  
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## I. REAL PARTY IN INTEREST

The real party in interest is the Medical College of Georgia Research Institute, the assignee of the present application.

## II. RELATED APPEALS AND INTERFERENCES

There are currently no appeals or interferences known to Appellant, Appellant's legal representative, or the assignee that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

## III. STATUS OF CLAIMS

Claims 2 and 3 have been cancelled. No claims have been withdrawn.

Claims 1 and 4-17 are currently pending and are the only rejected claims on appeal. A clean copy of Claims 1 and 4-17 on appeal appears in the attached Claims Appendix.

## IV. STATUS OF AMENDMENTS

On September 18, 2006 filed an Amendment After Final (Amendment After Final) pursuant to 37 C.F.R. § 1.116(b) that amended Claims 6, 8, 13 and 15 in response to the Final Office Action. This Amendment was entered by the Examiner and resulted in the rejection of Claims 6, 8, 13 and 15 under 35 U.S.C. § 112, second paragraph being withdrawn in the October 4, 2006 Advisory Action (Advisory Action). All other rejections of the Claims were maintained in the Advisory Action (see Advisory Action, p. 2).

## V. SUMMARY OF CLAIMED SUBJECT MATTER

In one embodiment, Appellant's claimed invention relates to an interproximal strip (e.g., 102) comprising four zones. The first zone (e.g., 108) is disposed centrally and is substantially smooth on a first face of the interproximal strip. The second zone (e.g. 106 of FIG. 1A) comprises a first abrasive and is disposed in longitudinal

succession of the first zone on the first face of the interproximal strip. The third zone (e.g. 106 of FIG. 1B) comprises a second abrasive material and is disposed on the first face of the interproximal strip and is disposed on an opposite side of the first zone. The fourth zone (e.g. 104 of FIG. 1A) comprises a third abrasive material and is disposed on a second face of the interproximal strip (See Claim 1, the specification at page 2, lines 28-39 (paragraph [0024]<sup>1</sup>, and Figs. 1A and 1B).

In an alternative embodiment, Appellant's claimed invention relates to a method comprising the steps of: (1) inserting an interproximal strip, as described above, between two adjacent teeth at the first zone; and (2) creating a space between the adjacent teeth by abrading the teeth with at least the first face of the interproximal strip (See Claim 10, and the specification at page 2, lines 57-66 (paragraph [0025]). The space may be increased by abrading the teeth with the first and second faces of the interproximal strip (See Claim 17, and the specification at page 2, lines 57-66 (paragraph [0025]).

The interproximal strip may have a first and second abrasive that are substantially similar (See Claim 4 and 11) or substantially different (See Claim 5 and 12). (See also the specification at page 2, lines 36-39.) The interproximal strip may have a second and third abrasive that are substantially similar (See Claims 6, 8, 13 and 15) or substantially different (See Claims 7, 9, 14 and 16).

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

There are two grounds of rejection to be reviewed on this appeal:

- A. The first ground of rejection is whether Claims 1, 4-6, 8, 10-13, 15 and 17 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,836,810 to Asum (Asum) in view of U.S. Patent No. 6,396,873 to Blank (Blank); and

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<sup>1</sup> All references to the specification are to U.S. Published Application 2005/0058963 A1.

B. The second ground of rejection is whether dependent Claims 7, 9, 14 and 16 are unpatentable under 35 U.S.C. § 103(a) over Asum in view Blank and further in view of U.S. Patent No. 4,690,642 to Kyotani (Kyotani).

## VII. ARGUMENT

A. **REJECTION OF CLAIMS 1, 4-6, 8, 10-13, 15 and 17 UNDER 35 U.S.C. § 103(a)  
AS BEING UNPATENTABLE OVER ASUM IN VIEW BLANK.**

In rejecting Claims 1, 4-6, 8, 10-13, 15 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Asum in view of Blank, the Examiner has erred in the Final Office Action for at least the following four reasons: (1) by failing to provide an Affidavit under 37 CFR § 104(d)(2) that was properly requested by Appellant in its June 5, 2006 Amendment (Appellant's June Amendment); (2) by failing to provide an Affidavit under 37 CFR § 104(d)(2) that was properly requested by Appellant in its Amendment After Final; (3) by failing to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a) by alleging no proper "motivation" to combine Blank with Asum; and (4) by failing to show how all of the features of Claim 17 are taught or suggested by the combination of Asum in view of Blank.

1. **The Examiner has Failed to Comply with 37 C.F.R. § 104(d)(2) in  
Response to Appellant's June Amendment.**

In the March 15, 2006 Non-Final Office Action (Non-Final Office Action), the Examiner rejected Claims 1, 4-6, 8, 10-13, 15 and 17 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,836,810 to Asum in view of Blank, despite failing to provide any proper motivation for combining the cited references. In responding to the Non-Final Office Action, (See Appellant's June Amendment, pp. 9-10), Appellant properly requested the Examiner to supply an Affidavit under 37 CFR § 1.104(d)(2) to provide the factual evidence upon which the Examiner relied in finding motivation to combine

Blank with Asum. But to date, the Examiner has failed to provide the Appellant with the requested Affidavit.

Appellant notes that in the unpublished case of *In re Sun*, 31 USPQ2d 1451, 1455 (Fed. Cir. 1993), the PTO argued “the procedures established by 37 C.F.R. Section 1.107(b) (1993) [now 37 CFR § 1.104(d)(2)] *expressly entitle* an Appellant, on mere request, to an examiner affidavit that provides [citations that support the Examiner’s asserted level of skill in the art]” (emphasis added). Furthermore, in *In re Sun*, the Federal Circuit, held that “this procedure, so readily available, helps save the lack of citation in an office action from possible constitutional infirmity in denying reasonable notice and hence due process.” See 31 USPQ2d at 1455. Accordingly, the Examiner’s failure to comply with 37 CFR § 1.104(d)(2) has also denied the Appellant his statutory rights under the Administrative Procedures Act (APA), as well as his Constitutional rights under the Fifth Amendment, to reasonable notice and due process.

Because the Examiner has failed to comply with the 37 CFR § 1.104(d)(2) by providing the requested Affidavit, the rejection of Claims 4-6, 8, 10-13 and 15 over Asum in view of Blank is *prima facie* improper and should be withdrawn.

2. The Examiner Has Failed to Comply with 37 CFR § 104(d)(2) in Response to Appellant’s Amendment After Final.

In the Final Office Action, the Examiner rejected Claims 1, 4-6, 8, 10-13, 15 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Asum in view of Blank, despite failing to provide any proper motivation for combining Blank with Asum. Appellant again properly requested the Examiner to provide the factual evidence upon which the Examiner relied in finding motivation to combine Blank with Asum (See Appellant’s Amendment After Final, Section G, p. 12). But to date, the Examiner has also failed to provide the Appellant with this requested Affidavit. The Examiner’s comments in the Advisory Action also fail to address Appellant’s Request for an Affidavit under 37 CFR § 1.104(d)(2) in Appellant’s Amendment After Final.

Because the Examiner has also failed to provide Appellant with the properly requested Affidavit under 37 CFR § 1.104(d)(2) in Appellant's Amendment After Final, the rejection of Claims 1, 4-6, 8, 10-13, 15 and 17 over Asum in view of Blank is *prima facie* improper and should be withdrawn (See *In re Sun*, 31 USPQ2d 1451, 1455 (Fed. Cir. 1993), quoted above).

**3. The Rejection of Claims 1, 4-6, 8, 10-13, 15 and 17 under 35 U.S.C. § 103(a) over Asum in view of Blank is Prima Facie Improper Because the Examiner Has failed to Provide any Proper “Motivation” for Combining Blank with Asum.**

**a. Requirements to Establish Prima Facie Case of Obviousness.**

As set forth in Section 706.02(j) of the MPEP, "To establish a *prima facie* case of obviousness [under 35 U.S.C. § 103(a)] . . . there must be some suggestion or motivation, *either in the references themselves or in the knowledge generally available to one of ordinary skill in the art*, to modify the reference or to combine reference teachings. . . Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Appellant's disclosure.* See MPEP § 2143-§2143.03 for decisions pertinent to each of these criteria (emphasis added)." For at least the following reasons, the Final Office Action has erroneously failed to comply with the above requirements of MPEP § 706.02(j).

As stated by the Federal Circuit in *Sibia Neurosciences Inc. v. Cadus Pharmaceutical Corp.*, 55 USPQ2d 1927, 1931 (Fed. Cir. 2000), "[d]etermining whether there is a suggestion or motivation to modify a prior art reference is one aspect of determining the scope and content of the prior art, a fact question subsidiary to the ultimate conclusion of obviousness" (citing *Tec Air, Inc. v. Denso Mfg.*, 52

USPQ2d 1296, 1297-98 (Fed. Cir. 1999) (stating that the factual underpinnings of obviousness include whether a reference provides a motivation to combine its teachings with another)). Furthermore, as held by the Federal Circuit in *In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002), specific reasons must be shown in the art suggesting a combination of references (See also *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (“[P]articular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.”).

b. The Final Office Action, as Well as the Advisory Action Provides No Proper Motivation for Combining Blank with Asum.

The Final Office Action attempts to justify combining Asum and Blank based on the following allegation:

***Allegation 1***

It would be obvious to one of ordinary skill in the art to modify Asum to include abrasive on both sides as taught by Blank in order to deliver the abrasive action to the desired locations. (See Final Office Action, p. 3)

But Allegation 1 is completely unsupported by any factual evidence provided by the Final Office Action. In addition, and contrary to controlling Federal Circuit precedent (see Federal Circuit cases cited above), Allegation 1 fails to identify any portion of Asum that would properly provide a person of ordinary skill in the art reading Asum with motivation to look for Blank. The Final Office Action also fails to cite any text from Asum, Blank, or any other reference in support of Allegation 1 that shows that a person of ordinary skill in the art would be motivated to combine Blank with Asum. In fact, the Final Office Action has failed to even address the issue of “motivation” with respect to the combination of Blank with Asum. Because the Final Office Action has failed to provide any proper motivation for combining Asum with Blank, the

rejection of Claims 1, 4–6, 8, 10–13, 15 and 17 over Asum in view of Blank is *prima facie* improper.

The Advisory Action also attempts to justify combining Asum and Blank based on the following allegations:

***Allegation 2***

The combination is proper because all of the applied art is directed to solving the problem of removing material from between teeth and teach placing abrasive in areas that best obtain this result. (See Advisory Action, p. 3)

***Allegation 3***

A difference in degree of the abrasive material is held to properly be within the level of one of ordinary skill in the art to choose. (See Advisory Action, p. 3)

But Allegations 2 and 3 are completely unsupported by any factual evidence provided by the Advisory Action. In addition, and contrary to controlling Federal Circuit precedent (see Federal Circuit cases cited above), Allegations 2 and 3 fail to identify any portion of Asum that would properly provide a person of ordinary skill in the art reading Asum with motivation to look for Blank. The Advisory Action also fails to cite any text from Asum, Blank, or any other reference in support of Allegations 2 and 3 that shows that a person of ordinary skill in the art would be motivated to combine Blank with Asum. Therefore, the Advisory Action still fails to remedy the deficiencies of the Final Office Action by providing no proper motivation for combining the cited references.

c. The Rejection of Claims 1, 4–6, 8, 10–13, 15 and 17 over Asum in view of Blank Is Based on an Improper Hindsight Use of Appellant’s Own Disclosure.

The alleged bases for combining Asum with Blank set forth in the Final Office Action in Allegation 1, and set forth in the Advisory Action in Allegations 2 and 3, quoted above, presuppose the combination of Blank with Asum and then provide a hindsight justification for this combination. But for reading Appellant’s application, a person of ordinary skill in the art would have no reason to combine Blank with Asum. Such reliance on Appellant’s application to combine the cited references is impermissible according to controlling Federal Circuit precedent. As the Federal Circuit stated in *Cardiac Pacemakers Inc. v. St Jude Medical Inc.* 72 USQP2d 1333, 1336 (Fed. Cir 2004) that “Prior knowledge in the field of the invention must be supported by tangible teachings of reference materials, and the suggestion to combine references must not be derived by hindsight from knowledge of the invention itself. See also *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573, 1578-79 [42 USPQ2d 1378] (Fed. Cir. 1997) (“However, the record must provide a teaching, suggestion, or reason to substitute computer-controlled valves for the system of hoses in the prior art. The absence of such a suggestion to combine is dispositive in an obviousness determination.”).” Therefore, based on controlling Federal Circuit precedent, the rejection of Claims 1, 4–6, 8, 10–13, 15 and 17 over Asum in view of Blank is *prima facie* improper, because the rejection is based on improper hindsight.

d. Because the Final Office Action Provides No Proper Motivation for Combining Asum with Blank, the Rejection of Claims 1, 4–6, 8, 10–13, 15 and 17 over this combination is *prima facie* improper and should be withdrawn.

For at least the reasons discussed above, the combination of Asum with Blank is *prima facie* improper according to both MPEP § 706.02(j) and controlling Federal

Circuit case law. Therefore, the rejection of Claims 1, 4–6, 8, 10–13, 15 and 17 over Asum in view of Blank under 35 U.S.C. § 103(a) is *prima facie* improper and should be withdrawn.

4. **The Examiner Has Failed to Show How All of the Features of Claim 17 Are Taught or Suggested by the Combination of Asum with Blank.**

As noted above in Section VII(A)(3)(a), in order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a) “the prior art reference (or references when combined) must teach or suggest all the claim limitations” (See MPEP § 706.02(j)). Claim 17 claims a method comprising “creating a space between . . . adjacent teeth by abrading said teeth with at least [a] first face of [an] interproximal strip” (see Claim 10 from which Claim 17 depends) and “increasing said created space by abrading teeth with said first [face] and [said] second [face] of said interproximal strip.”

The Final Office Action rejects Claim 17 based primarily on the following allegation:

*Allegation 4*

As to claims 10 and 17, the method steps are obvious uses of the shown structure to one of ordinary skill in the art. (See Final Office Action, p. 3)

But Allegation 4 is completely unsupported by any factual evidence provided by the Final Office Action. Furthermore, Appellant can find no teaching or suggestion in Asum or Blank of Claim 17’s feature of creating a space between two teeth and increasing the space between two teeth with a single interproximal strip. Accordingly, the combination of Asum with Blank cannot teach or suggest all of the features of Claim 17, and, therefore, the rejection of Claim 17 over Asum in view of Blank is *prima facie* improper under 37 U.S.C. § 103(a) for this additional reason.

B. **REJECTION OF CLAIMS 7, 9, 14 and 16 UNDER 35 U.S.C. § 103(a) AS BEING UNPATENTABLE OVER ASUM IN VIEW BLANK AND FURTHER IN VIEW OF KYOTANI.**

In rejecting Claims 7, 9, 14 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Asum in view of Blank and further in view of Kyotani, the Examiner has erred in the Final Office Action for at least the following four reasons: (1) by failing to provide an Affidavit under 37 CFR § 104(d)(2) that was properly requested by Appellant in its June 5, 2006 Amendment (Appellant's June Amendment); (2) by failing to provide an Affidavit under 37 CFR § 104(d)(2) that was properly requested by Appellant in its Amendment After Final; and (3) by failing to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a) by providing no proper "motivation" to combine Blank with Asum and Kyotani.

1. **The Examiner has Failed to Comply with 37 C.F.R. § 104(d)(2) in Response to Appellant's June Amendment.**

In the March 15, 2006 Non-Final Office Action (Non-Final Office Action), the Examiner rejected Claims 7, 9, 14 and 16 under 35 U.S.C. § 103(a) over U.S. Patent No. 5,836,810 to Asum in view of Blank and further in view of Kyotani, despite failing to provide any proper motivation for combining the cited references. In responding to the Non-Final Office Action, (See Appellant's June Amendment, pp. 9-10), Appellant properly requested the Examiner to supply an Affidavit under 37 CFR § 1.104(d)(2) to provide the factual evidence upon which the Examiner relied in finding motivation to combine Blank with Asum. But to date, the Examiner has failed to provide the Appellant with the requested Affidavit.

For the reasons discussed above in Section VII(A)(1), the Examiner's failure to comply with 37 CFR § 1.104(d)(2) has denied the Appellant his statutory rights under the Administrative Procedures Act (APA), as well as his Constitutional rights under the Fifth Amendment, to reasonable notice and due process.

Because the Examiner has failed to comply with the 37 CFR § 1.104(d)(2) in providing the requested Affidavit, the rejection of Claims 7, 9, 14 and 16 over Asum in view of Blank and further in view of Kyotani is *prima facie* improper and should be withdrawn.

2. **The Examiner Has Failed to Comply with 37 CFR § 104(d)(2) in Response to Appellant's Amendment After Final.**

In the Final Office Action, the Examiner rejected Claims 7, 9, 14 and 16 under 35 U.S.C. § 103(a) as being unpatentable over Asum in view of Blank in view of Kyotani, despite failing to provide any proper motivation for combining Blank with Asum and also despite failing to provide any proper motivation for combining Kyotani with the combination of Asum in view of Blank. Appellant again properly requested that the Examiner provide the factual evidence upon which the Examiner relied in finding motivation to combine Blank with Asum and to combine Kyotani with the combination of Asum in view of Blank (See Appellant's Amendment After Final, Section G, p. 12). But to date, the Examiner has failed to provide the Appellant with the requested Affidavit. The Examiner's comments in the Advisory Action also fail to address Appellant's Request for an Affidavit under 37 CFR § 1.104(d)(2) in Appellant's Amendment After Final.

Because the Examiner has also failed to provide Appellant with the properly requested Affidavit under 37 CFR § 1.104(d)(2) in Appellant's Amendment After Final, the rejection of Claims 7, 9, 14 and 16 over Asum in view of Blank and further in view of Kyotani is *prima facie* improper and should be withdrawn (See *In re Sun*, 31 USPQ2d 1451, 1455 (Fed. Cir. 1993), quoted above).

3. The Rejection of Claims 7, 9, 14 and 16 under 35 U.S.C. § 103(a) over Asum in view of Blank and Further in view of Kyotani Is Prima Facie Improper Because the Examiner Has Failed to Provide any Proper “Motivation” for Combining Blank with Asum and for Combining Kyotani with Asum in view of Blank.
  - a. The Examiner Has Provided No Proper “Motivation” for Combining Blank with Asum.

For at least the reasons discussed above in Section VII(A)(3), the combination of Asum in view Blank is *prima facie* improper according to both MPEP § 706.02(j) and controlling Federal Circuit case law. Therefore, the combination of Kyotani with Asum in view of Blank is also *prima facie* improper and the rejection of Claims 7, 9, 14 and 16

3. The Examiner Has also Failed to Provide Any Proper “Motivation” for combining Kyotani with Asum in view of Blank.

The Final Office Action admits that the combination of Asum in view of Blank “does not show using different abrasives on both sides” (see Final Office Action, p. 3). The Final Office Action then attempts to justify combining Kyotani with Asum in view of Blank based on the following allegation:

***Allegation 5***

It would be obvious to one of ordinary skill in the art to modify the above combination to include using different abrasives on different sides as shown by Kyotani in order to apply the desired degree of abrasives to the desired locations. (See Final Office Action, p. 3)

But Allegation 5 is completely unsupported by any factual evidence provided by the Final Office Action. In addition, and contrary to controlling Federal Circuit precedent (see Federal Circuit cases cited above), Allegation 5 fails to cite any portion of Asum, Blank, Kyotani, or any other reference in support of Allegation 5 that a person of ordinary skill in the art would be motivated to combine Kyotani with Blank and Asum. The Final Office Action not only fails to identify any text in Blank and/or Asum that would suggest that a person of ordinary skill in the art reading Asum and/or Blank should read Kyotani, but also fails to identify any portion of Kyotani that suggests that a person reading Kyotani should look at Blank and/or Asum. Because the Final Office Action has not provided any proper basis for combining Kyotani with Blank and Asum, the rejection of Claims 7, 9, 14 and 16 over Asum in view of Blank, and further in view of Kyotani, is *prima facie* improper.

The Advisory Action also attempts to justify combining Kyotani with Asum and Blank based on Allegations 2 and 3 quoted above in Section VII(A)(3). But Allegations 2 and 3, as discussed above, are completely unsupported by any factual evidence provided by the Advisory Action. In addition, and contrary to controlling Federal Circuit precedent (see Federal Circuit cases cited above), Allegations 2 and 3 fail to identify any portion of Asum and/or Blank that would properly provide a person of ordinary skill in the art reading Asum and/or Blank with motivation to look for Kyotani. The Advisory Action also fails to cite any text from Asum, Blank, Kyotani or any other reference in support of Allegations 2 and 3 that show that a person of ordinary skill in the art would be motivated to combine Kyotani with the combination of Asum in view of Blank. Therefore, the Advisory Action still fails to remedy the deficiencies of the Final Office Action by providing no proper motivation for combining the cited references.

c. **The Rejection of Claims 7, 9, 14 and 16 over Asum in view of Blank, and Further in view of Kyotani Is Based on an Improper Hindsight Use of Appellant's Own Disclosure.**

The alleged basis for combining Kyotani with Asum in view of Blank set forth in the Final Office Action in Allegation 5, quoted above, presupposes the combination of Kyotani with Asum in view of Blank, and then provides a hindsight justification for this combination. But for reading Appellant's application, a person of ordinary skill in the art would have no reason to combine Kyotani with Asum in view of Blank. Such reliance on Appellant's application to combine the cited references is impermissible according to controlling Federal Circuit precedent (see Federal Circuit cases cited above in Section VII(A)(3)(c)). Therefore, based on controlling Federal Circuit precedent, the rejection of Claims 7, 9, 14 and 16 over Asum in view of Blank and further in view of Kyotani is *prima facie* improper, because the rejection is based on improper hindsight.

d. Because the Rejection of Claims 7, 9, 14 and 16 over Asum in view of Blank and Further in view of Kyotani Is *Prima Facie* Improper, this Rejection Should Be Withdrawn.

For at least the reasons discussed above, the Final Office Action and Advisory Action have failed to show where all of the features of Claims 7, 9, 14 and 16 are taught or suggested by the combination Asum in view of Blank and further in view of Kyotani. Also, for at least the reasons discussed above, the combination of Asum in view Blank and further in view of Kyotani is *prima facie* improper under 35 U.S.C. § 103(a) according to both MPEP § 706.02(j) and controlling Federal Circuit case law. Therefore, the rejection of Claims 7, 9, 14 and 16 under 35 U.S.C. §103(a) over Asum in view of Blank and further in view of Kyotani is *prima facie* improper and should be withdrawn.

### SUMMARY OF ARGUMENT AND RELIEF REQUESTED

For at least the reasons discussed above, the rejection of Claims 1, 4-6, 10-13, 15 and 17 under 35 U.S.C. § 103(a) over Asum in view of Blank is *prima facie* improper and should be withdrawn. Also, for at least the reasons discussed above, the rejection of Claims 7, 9, 14 and 16 under 35 U.S.C. § 103(a) over Asum in view of Blank and further in view of Kyotani is *prima facie* improper and should be withdrawn.

Accordingly, Appellant respectfully requests the Honorable Board of Appeals and Interferences to reverse the Examiner's rejections of Claims 1 and 4-17 and remand with directions to allow the present application to issue with currently pending Claims 1 and 4-17.

Respectfully submitted,

  
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## VIII. CLAIM APPENDIX

1. An interproximal strip comprising:
  - a plurality of zones; said plurality of zones comprising at least a first, second, third and fourth zones; wherein:
    - said first zone is disposed centrally on said interproximal strip and is substantially smooth on at least a first face of said interproximal strip;
    - said second zone is disposed in longitudinal succession of said first zone on said first face of said interproximal strip;
    - said second zone comprising a first abrasive;
    - said third zone is disposed on said first face of said interproximal strip and is disposed on an opposite side of said first zone with respect to said second zone;
    - said third zone comprising a second abrasive material;
    - said fourth zone is disposed on a second face of said interproximal strip;
    - said fourth zone comprising a third abrasive material.
4. The interproximal strip of claim 1, wherein said first abrasive and said second abrasive are substantially similar.
5. The interproximal strip of claim 1, wherein said first abrasive is different than said second abrasive.
6. The interproximal strip of claim 4, wherein said second abrasive and said third abrasive are substantially similar.
7. The interproximal strip of claim 4, wherein said second abrasive is different than said third abrasive.
8. The interproximal strip of claim 5, wherein said second abrasive and said third abrasive are substantially similar.
9. The interproximal strip of claim 5, wherein said second abrasive is different than said third abrasive.

10. A method of interproximal reduction comprising:

inserting an interproximal strip, said interproximal strip comprising a plurality of zones; said plurality of zones comprising at least a first, second, third and fourth zones; wherein:

    said first zone is disposed centrally on said interproximal strip and is substantially smooth on at least a first face of said interproximal strip;

    said second zone is disposed in longitudinal succession of said first zone on said first face of said interproximal strip;

    said second zone comprising a first abrasive;

    said third zone is disposed on said first face of said interproximal strip and is disposed on an opposite side of said first zone with respect to said second zone;

    said third zone comprising a second abrasive material;

    said fourth zone disposed on a second face of said interproximal strip;

    said fourth zone comprises a third abrasive material, between two adjacent teeth at said first zone; and

    creating a space between said adjacent teeth by abrading said teeth with at least said first face of said interproximal strip.

11. The method of interproximal reduction of claim 10, wherein said first abrasive and said second abrasive are substantially similar.

12. The method of interproximal reduction of claim 10, wherein said first abrasive is different than said second abrasive.

13. The method of interproximal reduction of claim 11, wherein said second abrasive and said third abrasive are substantially similar.

14. The method of interproximal reduction of claim 11, wherein said second abrasive is different than said third abrasive.

15. The method of interproximal reduction of claim 12, wherein said second abrasive and said third abrasive are substantially similar.
16. The method of interproximal reduction of claim 12, wherein said second abrasive is different than said third abrasive.
17. The method of interproximal reduction of claim 10 further comprising:  
increasing said created space by abrading said teeth with said first and second faces of said interproximal strip.

Application No. 10/664,039  
Attorney Docket No. MCOG-0002-UT1

Appeal Brief in Response to  
Final Office Action of July 18, 2006

## **IX. EVIDENCE APPENDIX**

There is no evidence of record other than the references cited by the Examiner during the prosecution of the present application.

Application No. 10/664,039  
Attorney Docket No. MCOG-0002-UT1

Appeal Brief in Response to  
Final Office Action of July 18, 2006

#### **X. RELATED PROCEEDINGS APPENDIX**

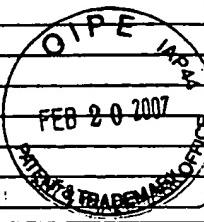
There have been no decisions rendered by a court or the Board in any proceedings related to this appeal.

# Patent Fee Transmittal for FY 2006

Applicant(s) Claims Small Entity Status 37 C.F.R. 1.27

<b>TOTAL AMOUNT OF PAYMENT</b>	<b>\$250.00</b>
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Application No.	10/664,039
Filing Date	17-Sep-03
Named Inventor	STOCKSTILL, John W.
Examiner Name	WILSON, John J.
Art Unit	3732
Attorney Docket No.	MCOG-0002-UT1



## FEE CALCULATION

### 1. Filing Fees

Application Type	Description	Large Entity		Small Entity		Paid
		Code	(\$)	Code	(\$)	
Utility	Basic	1011	300	2011	150	\$ -
	Examination	1311	200	2311	100	\$ -
	Search	1111	500	2111	250	\$ -
Design	Basic	1012	200	2012	100	\$ -
	Examination	1312	130	2312	65	\$ -
	Search	1112	100	2112	50	\$ -
Plant	Basic	1013	200	2013	100	\$ -
	Examination	1313	160	2313	80	\$ -
	Search	1113	300	2113	150	\$ -
Reissue	Basic	1014	300	2014	150	\$ -
	Examination	1114	600	2114	300	\$ -
	Search	1314	500	2314	250	\$ -
Provisional	Basic	1005	200	2005	100	\$ -
National Stage	Basic	1631	300	2631	150	\$ -
	Examination	1633	200	2633	100	\$ -
	Search	1632	500	2632	250	\$ -

### 2. Extra Claim Fee

#### a. Claims as Filed

Total Claims	0	- 20 =	0	x	Extra Claims	Large Entity	Small Entity	Paid		
Independent	0	- 3 =	0	x		1201	50	2201	25	\$ -
Multiple Dependent						1202	200	2202	100	\$ -

#### b. Claims as Amended

Total Claims	After Amnt	Highest Paid	Present Extra	Large Entity	Small Entity	Paid			
Total Claims	15	17	= 0	x	1201	50	2201	25	\$ -
Independent	2	3	** = 0	x	1202	200	2202	100	\$ -
First Presentation of Multiple Dependent					1203	360	2203	180	\$ -

### 3. Extra Page Fee

Total Pages	Extra Pages	Large Entity	Small Entity	Paid
0	-100	0	x	1081 250 2081 125 \$ -

### Subtotal for Application Fees

$$1 \boxed{\$} - + 2 \boxed{\$} - + 3 \boxed{\$} - = \boxed{\$}$$

### 4. Additional Fees

Description	Large Entity		Small Entity		Paid
	Code	(\$)	Code	(\$)	
Extension for response first month	1251	120	2251	60	\$ -
Extension for response second month	1252	450	2252	225	\$ -
Extension for response third month	1253	1,020	2253	510	\$ -
Extension for response fourth month	1254	1,590	2254	795	\$ -
Extension for response fifth month	1255	2,160	2255	1,080	\$ -
Notice of Appeal	1401	500	2401	250	\$ -
Filing a Brief in Support of an Appeal	1402	500	2402	250	\$ 250
Request for Oral hearing	1403	1,000	2403	500	\$ -
Petitions under 1.17(f)	1462	400	1462	400	\$ -
Petitions under 1.17(g)	1463	200	1463	200	\$ -
Petitions under 1.17(h)	1464	130	1464	130	\$ -
Petition - public use proceeding	1451	1,510	1451	1,510	\$ -
Petition to Revive - Unavocable	1452	500	2452	250	\$ -
Petition to Revive - Unintentional	1453	1,500	2453	750	\$ -
Utility Issue Fee	1501	1,400	2501	700	\$ -
Design Issue Fee	1502	800	2502	400	\$ -
Plant Issue Fee	1503	1,100	2503	550	\$ -
Reissue Issue Fee	1511	1,400	2511	700	\$ -
Publication Fee	1504	300	1504	300	\$ -
Statutory Disclaimer	1814	130	2814	65	\$ -

(cont.)

### Description (cont.)

Description (cont.)	Code	(\$)	Code	(\$)	Paid
Recording each Assignment	8021	40	8021	40	\$ -
Submission of IDS	1806	180	1806	180	\$ -
Request for Cont. Examination (RCE)	1801	790	2801	395	\$ -
Filing Submission After Final	1809	790	2809	395	\$ -
Surcharge - late filing fee or oath	1051	130	2051	65	\$ -
Surcharge - late provisional fee	1052	50	2052	25	\$ -
Non-English Specification	1053	130	1053	130	\$ -
Processing Fee 37 CFR 1.17(q)	1807	50	1807	50	\$ -
Request for Ex Parte Reexamination	1812	2,520	1812	2,520	\$ -
Request Pub. of SIR prior to action	1804	920	1804	920	\$ -
Request Pub. of SIR after action	1805	1,840	1805	1,840	\$ -
Each Add. Invention Examined	1810	790	2810	395	\$ -
Expedited Examination (Design)	1802	900	1802	900	\$ -
Unintentionally Delayed Priority Claim	1453	1,370	1453	1,370	\$ -
Certificate of Correction	1811	100	1811	100	\$ -
Maintenance Fees 3.5 years	1551	900	2551	450	\$ -
Maintenance Fees 7.5 years	1552	2,300	2552	1,150	\$ -
Maintenance Fees 11.5 years	1553	3,800	2553	1,900	\$ -
Surcharge - Late Payment 6 mos.	1554	130	2554	65	\$ -
Other fee					\$ -

Additional Fee Subtotal 4 **\$ 250**

### METHOD OF PAYMENT (Check all that apply)

- Credit Card (Provide credit card information and authorization on PTO-203B)
- Deposit Account No. **10-0233-MCOG-0002-UT1**

For the above-identified deposit account, the Director is hereby authorized to:

- To charge the above-identified fee.
- To charge any additional fees which may be required under 37 CFR 1.16, 1.17, 1.18, 1.20 and 1.492 or credit any overpayment to the deposit account number listed above.

### Submitted by:

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Signature

February 20, 2007

Date